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NO. 5033 P. 1



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

11250 EL CAMINO REAL, SUITE 200
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SAN DIEGO, CA 92138-0278
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United States Patent and Trademark Office Commissioner for Patents Examiner: Hines, Jana A. Art Unit: 1645		571-273-8300

From : Barry S. Wilson
Email Address : bwilson@foley.com
Sender's Direct Dial : 858.847.6722
Date : June 28, 2006
Client/Matter No : 071949-5914
User ID No : 3067

U.S. Application No.: 10/759,216
Docket No.: 071949-5914

MESSAGE:

Please find enclosed:

Transmittal (1 page);

Power of Attorney by Assignee(2 pages);

Statement Under § 3.73(b) (2 pages) with attachments (15 pages).

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NO. 5033 P. 2

JUN 28 2006

Atty. Dkt. No. 071949-5914

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kingsmore et al.

Title: BIOMARKERS FOR SEPSIS

Appl. No.: 10/759,216

Filing Date: 1/20/2004

Examiner: Hines, Jana A.

Art Unit: 1645

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TRANSMITTAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed please find:

[X] Power of Attorney by Assignee (2 pages).

[X] Statement Under § 3.73(b) (2 pages) with attachments (15 pages).

The Commissioner is hereby authorized to charge the fee for the extension of time and any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16, 1.17, and 1.21 that may be required by this transmittal, or to credit any overpayment, to Deposit Account No. 50-0872.

Respectfully submitted,

Date

June 28, 2006

FOLEY & LARDNER LLP

Customer Number: 30542

Telephone: (858) 847-6722

Facsimile: (858) 792-6773

By

Barry S. Wilson

Richard Warburg, Reg. No. 32,327

By Barry S. Wilson, Reg. No. 39,431

Attorney for Applicant

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CENTRAL FAX CENTER**JUN 28 2006** Atty. Dkt. No. 071949-5914***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Kingsmore et al.
Title: BIOMARKERS FOR SEPSIS
Appl. No.: 10/759,216
Filing Date: 1/20/2004
Examiner: Unknown
Art Unit: 1645

CERTIFICATE OF FACSIMILE TRANSMISSION I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Alexandria, Virginia on the date below. Vanessa E. Agha (Printed Name) <i>Vanessa E. Agha</i> (Signature) June 28, 2006 (Date of Deposit)

POWER OF ATTORNEY OR AUTHORIZATION OF AGENT
BY ASSIGNEE AND
CHANGE OF CORRESPONDENCE ADDRESS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Biosite Incorporated, an institution having its principal place of business at 9975 Summers Ridge Road, San Diego, CA, is the Assignee and owner of the entire right, title, and interest in and to the above-identified patent application as indicated in a Statement under 37 CFR § 3.73(b) filed herewith.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of the undersigned's knowledge and belief, title is in the assignee identified above. The undersigned affirms that the documentary evidence of the chain of title from the original owner to the assignee was, or currently is, submitted for recordation pursuant to 37 CFR § 3.11.

Atty. Dkt. No. 071949-5914

Assignee hereby appoints revokes all prior powers of attorney and appoints the registered attorneys and agents at Customer Number:

30542

as its principal attorneys to have full power to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent, to transact all business in the United States Patent and Trademark Office connected therewith, and to have full power of substitution, association, and revocation, including the power to revoke the power of attorney of ~~any associate attorney.~~

Please direct all future correspondence concerning this application to:

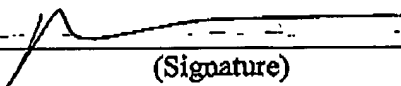
Barry S. Wilson
FOLEY & LARDNER LLP
P.O. Box 80278
San Diego, California 92138-0278

Telephone: (858) 847-6722
Facsimile: (858) 792-6773

Executed this 16 day of June, 2006.

BIOSITE INCORPORATED

By:


(Signature)Paul McPherson
(Printed Name)VP R&D
(Title)

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JUN 28 2006

Atty. Dkt. No. 071949-5914

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kingsmore et al.
Title: BIOMARKERS FOR SEPSIS
Appl. No.: 10/759,216
Appl. Filing Date: 1/20/2004
Examiner: Hines, Jana A.
Art Unit: 1645

CERTIFICATE OF FACSIMILE TRANSMISSION I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Alexandria, Virginia on the date below. Vanessa E. Agha (Printed Name) <i>Vanessa E. Agha</i> (Signature) June 28, 2006 (Date of Deposit)

STATEMENT BY ASSIGNEE UNDER § 3.73(b)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Biosite Incorporated, a Delaware corporation, with its principal place of business at 9975 Summers Ridge Road, San Diego, 92121, certifies that it is the Assignee and owner of the entire right, title, and interest in and to the above-identified patent application by virtue of the following instruments:

1. Assignment from Stephen F. Kingsmore to Molecular Staging, Inc. dated 06/16/2004;
2. Assignment from Serguei Lejnine to Molecular Staging, Inc. dated 06/16/2004;
3. Assignment from Mark Driscoll to Molecular Staging, Inc. dated 6/16/2004;
4. Assignment from Velizar T. Tchernev to Molecular Staging, Inc. dated 6/16/2004;
5. Assignment from Molecular Staging, Inc. to Eli Lilly and Company dated 2/14/2005; and
6. Assignment from Eli Lilly and Company to Biosite Incorporated dated 3/3/2006.

Atty. Dkt. No. 071949-5914

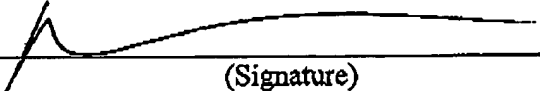
The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above. The undersigned affirms that the documentary evidence of the chain of title from the original owner to the assignee was, or currently is, submitted for recordation pursuant to § 311.

The undersigned, whose title is supplied below, is empowered to sign this certificate on behalf of the assignee.

Executed this 16 day of June, 2006.

BIOSITE INCORPORATED

By:


(Signature)

Paul M. Thompson
(Printed Name)

VP R&D
(Title)

(Telephone No.)

**UNITED STATES PATENT AND TRADEMARK OFFICE**UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JULY 14, 2005

PTAS



102944125A

KIMBERLY S. RHOADES
ELI LILLY AND COMPANY
PATENT DIVISION
P.O. BOX 6288
INDIANAPOLIS, IN 46206-6288**RECEIVED**

JUL 20 2005

ELI LILLY & COMPANY, PATENT DEPT.UNITED STATES PATENT AND TRADEMARK OFFICE
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RECORDATION DATE: 02/14/2005

REEL/FRAME: 016262/0447
NUMBER OF PAGES: 4BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).
DOCKET NUMBER: X-17064

ASSIGNOR:

MOLECULAR STAGING INC.

DOC DATE: 12/10/2004

ASSIGNEE:

LILLY RESEARCH LABORATORIES, A
DIVISION OF ELI LILLY & COMPANY
PATENT DIVISION
LILLY CORPORATE CENTER
INDIANAPOLIS, INDIANA 46285

SERIAL NUMBER: 10759216

FILING DATE: 01/20/2004

PATENT NUMBER:

ISSUE DATE:

TITLE: BIOMARKERS FOR SEPSIS

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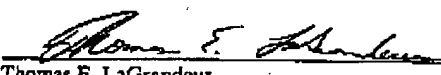
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NO. 5033 P. 8

016262/0447 PAGE 2

THERESA FREDERICK, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

2/14/5
02-18-2005

To the Honorable Commissioner for Patents at: 1. Name of conveying party(ies): Molecular Staging Inc. Additional name(s) of conveying party(ies) attached? () Yes (X) No		102944125 Y Attny Docket No. X-17064 Original documents or copy thereof: 2. Name of receiving party(ies): Name: Lilly Research Laboratories, a division of Eli Lilly & Company Internal Address: Patent Division Street Address: Lilly Corporate Center City: Indianapolis State: IN Zip: 46285 Additional name(s) & address(es) attached? () Yes (X) No	
3. Nature of conveyance: (X) Assignment () Merger () Security Agreement () Change of Name () Other Execution Date: December 10, 2004		OFFICE OF PATENT RECORDS FEB 14 AM 8:55 FINANCE SECTION	
4. Application number(s) or patent Number(s): If this document is being filed together with a new application, the execution date of the application is: _____ A. Patent Application No.(s): 10759,216 B. Patent No.(s): _____ Additional Numbers attached () Yes (X) No			
5. Name and address of party to whom correspondence concerning documents should be mailed: Kimberly S. Rhoades Eli Lilly and Company Patent Division P.O. Box 6288 Indianapolis, IN 46206-6288		6. Total number of applications and patents involved: () 7. Total fee (37 CFR §3.41) \$ 40.00 (\$40.00 per assignment) () Enclosed (X) Authorized to be charged to deposit account (along with any additional fees or the credit of any overpayment) 8. Deposit account number: 05-0840	
DO NOT USE THIS SPACE			
9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. <div style="display: flex; justify-content: space-between;"> <div>  Thomas E. LaGrandeur Reg. No. 51.026 </div> <div> Feb. 9, 2005 Date </div> </div>			
Total number of pages including cover sheet, attachments and document: (5)			
Certificate of Mailing I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450, on the date appearing below. <div style="display: flex; justify-content: space-between;"> <div> 02/17/2005 01 FC:8021 </div> <div> ELI LILLY AND COMPANY DATE February 9, 2005 </div> </div>			

Mail documents to be recorded with required cover sheet information to:
 Commissioner for Patents & Trademarks, Mail Stop Assignments,
 P.O. Box 1450, Alexandria, VA 22313-1450

ASSIGNMENT AND WAIVER AGREEMENT

This ASSIGNMENT AND WAIVER AGREEMENT (this "Agreement") is made as of December 10, 2004, by and between MOLECULAR STAGING INC. ("MSI") and LILLY RESEARCH LABORATORIES, a division of Eli Lilly & Co. ("LILLY"). MSI together with LILLY are sometimes referred to herein as the "Parties" and each, individually, as a "Party".

WITNESSETH:

WHEREAS, MSI and LILLY have entered into (i) that certain Biomarker Discovery Collaboration Agreement, dated as of December 11, 2002 (as amended by the letter agreement dated September 19, 2003, the "Sepsis Agreement") and (ii) that certain Biomarker Discovery Collaboration Agreement, dated as of October 23, 2003 (the "Diabetes Agreement" and together with the Sepsis Agreement, the "Agreements"), pursuant to which the Parties have certain rights and obligations that survived the termination thereof; and

WHEREAS, MSI has agreed to waive certain interests and assign its rights and obligations under the Biomarker Agreements to LILLY, and LILLY has agreed to assume such rights and obligations, upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Effective Date**. This Agreement shall become effective as of the date hereof (the "Effective Date"), only upon the completion of a non-refundable purchase by LILLY, from QIAGEN GmbH, a German Gesellschaft mit beschraenkter Haftung, of \$50,000 of Repli-g Whole Genome Amplification kits, provided such transaction is completed on or prior to December 10, 2004.

2. **Assignment**. MSI hereby assigns to LILLY, its successors and assigns the entire right, title and interest in, to and under MSI's portfolio of patent applications and other intellectual property rights arising from work done pursuant to the Agreements by MSI as set forth in Appendix A (the "IP"), including all priority rights for other countries arising therefrom, all inventions therein disclosed, and any and all present or future patent applications to such inventions that may be filed in any country; all of the above to be held and enjoyed by LILLY for its own use and enjoyment to the full end of the term or terms for which such IP rights may be granted.

3. **Waiver**. As of the Effective Date, MSI hereby waives all of its existing and future rights to any payments due pursuant to Section 8.1 of the Sepsis Agreement.

STM/286547.2

4. Release. As of the Effective Date, MSI shall, without further act or instrument, be released and discharged from any remaining obligations set forth in the Biomarker Agreements except those relating to confidentiality, publicity, publications and indemnification.

5. Representations & Warranties. MSI makes no representations or warranties of any kind with respect to this Agreement or the rights and obligations assigned or waived hereby except as follows:

(a) MSI hereby represents that it has all ownership rights in the IP and that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

6. Further Assurances. MSI further covenants and agrees with LILLY that upon request, and at the expense of LILLY, MSI will, without further consideration than that now paid, aid LILLY in: (i) executing documents relating to the IP; (ii) communicating to Lilly any facts known relating to such inventions or the history thereof; (iii) aid, to the extent commercially reasonable, in proceedings relating to the IP; (iv) executing and delivering any application papers, affidavits, declarations, assignments, or other instruments; and (v) do all other acts which may be necessary in the reasonable judgment of LILLY to carry out more effectively the provisions and purposes of this Agreement.

7. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the matters stated herein and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof and thereof.

8. Amendments. This Agreement may not be amended or modified unless such amendment or modification shall be in writing and signed by the Party against whom enforcement is sought.

9. Successors and Assigns. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns.

10. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

MOLECULAR STAGING INC.

By: 

Name: Peter A. Fuller, Ph.D.

Title: Senior Vice President, Business Development

LILLY RESEARCH LABORATORIES

By: 

Name: Steven M. Paul, M.D.

Title: Executive Vice President

ATK

Appendix A**Intellectual Property**

<u>Title</u>	<u>Inventors</u>	<u>Application No.</u>	<u>Filed</u>
Biomarkers for Sepsis	Kingsmore, Leinine Driscoll, Tchenev	10/759,216	01/20/04

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NO. 5033 P. 14

SAK/MHO



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

DECEMBER 17, 2004

PTAS



102771069A

BANNER & WITCOFF, LTD.
SARAH A. KAGAN
1001 G STREET, N.W.
11TH FLOOR
WASHINGTON, DC 2001-4597

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RECORDATION DATE: 06/16/2004

REEL/FRAME: 015466/0368
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

KINGSMORE, STEPHEN F.

DOC DATE: 05/21/2004

ASSIGNOR:

LEJNINE, SERGUEI

DOC DATE: 05/21/2004

ASSIGNOR:

DRISCOLL, MARK

DOC DATE: 05/21/2004

ASSIGNOR:

TCHERNEV, VELIZAR T.

DOC DATE: 05/21/2004

ASSIGNEE:

MOLECULAR STAGING, INC.
300 GEORGE STREET
NEW HAVEN, CONNECTICUT 06511

004835.00033

DEC 27 2004

Notice of Recordation Rec'd.

P.O. Box 1450, Alexandria, Virginia 22313-1450 - www.uspto.gov

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NO. 5033 P. 15

015466/0368 PAGE 2

SERIAL NUMBER: 10759216

FILING DATE: 01/20/2004

PATENT NUMBER:

ISSUE DATE:

TITLE: BIOMARKERS FOR SEPSIS

SHAREILL COLES, EXAMINER
ASSIGNMENT DIVISION
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NO. 5033 P. 16

6/16/04



RE

06-21-2004



102771069

Form PTO-1592 (modified)

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